IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
CITY AND COUNTY OF SAN FRANCISCO
--- oOo ---

LESLIE J. WHITELEY and LEONARD WHITELEY,

Plaintiffs,

vs.

No. 303184

RAYBESTOS-MANHATTAN, INC., et al.,

Defendants.

DEPOSITION OF
BARRY BEN-ZION

MARCH 14, 2000

REPORTED BY: SUZANNE MILLER, CSR 6354 (01-90745)

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DEFENDANT'S EXHIBITS MARKED FOR IDENTIFICATION

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(Note: Originals of Exhibits 3, 4 and 5 returned to plaintiffs' counsel. Reporter's copy of Exhibits 3, 4 and 5 given to Mr. Barron to retain.)

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vs.	)	No. 303184
RAYBESTOS-MANHATTAN, INC., et al., Defendants.	)	

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BE IT REMEMBERED that, pursuant to Notice, and on Tuesday, March 14, 2000, commencing at 10:33 a.m. thereof, at Superior Court, 400 McCallister Street, Room 525, San Francisco, California, before me, SUZANNE MILLER, a Certified Shorthand Reporter, personally appeared

BARRY BEN-ZION

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called as a witness by the Defendant, who, having been first duly sworn, was examined and testified as follows:

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WARTNICK, CHABER, HAROWITZ, SMITH & TIGERMAN, 101 California Street, Suite 2000, San Francisco, CA 94111-5802, 415.986.5566, represented

by MADELYN CHABER, Attorney at Law, appeared as counsel on behalf of the Plaintiffs.

HOWARD, RICE, NEMEROVSKI, CANADY, FALK & RABKIN, Three Embarcadero Center, Seventh floor, San Francisco, CA 94111-4065, 415.434.1600, represented by H. JOSEPH ESCHER III, Attorney at Law, appeared as counsel on behalf of the Defendant R.J. Reynolds.

SHOOK, HARDY & BACON LLP, One Market Plaza, Steuart Tower, Ninth floor, San Francisco, CA 94105-1310, 415.904.6300, represented by GERALD V. BARRON, Attorney at Law, appeared as counsel on behalf of the Defendant Philip Morris Corporation.

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EXAMINATION BY MR. ESCHER

(Defendant's Exhibit 1 was marked for identification.)

MR. ESCHER: Q. Good morning, Dr. Ben-Zion. My name is Joe Escher. I'm representing Defendant R.J. Reynolds Tobacco Company. Could you please give your full name for the record.

A. My name is Barry Ben-Zion.

Q. And, Dr. Ben-Zion, who are you employed by?

A. Sonoma State University and also self-employment.

Q. And you've brought a copy of your CV with you

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today, and we've had that marked as Exhibit 1; is that right?
A. Yes.
Q. This is a current CV?
A. Yes.
Q. Are there any publications listed on your CV that relate to the issue of punitive damages?
A. No.
Q. Have you ever testified on the subject of punitive damages before?
A. Yes.
Q. How many times?
A. It depends on whether you -- the question is in trial or in deposition. Very few times in trial. Many more times at depositions.
Q. How many times in trial?
A. I don't know. Probably less than ten.
Q. And when was the last time you did that; that is, testified in trial with respect to the issue of punitive damages?
A. I don't -- I don't know for sure, but I think -- I got -- I came back from Bakersfield last night at 10 o'clock at night and there was a fax of your asking me that question. So I rushed to see -- the last time I think was, I testified in a case called MF Bank

versus Stoner & Company in Alameda in 1998 -- no. The last time was Phillips versus Farmers Insurance Group in Contra Costa in 1999. That was the last trial, to the best of my recollection, that I testified concerning punitive damages.
Q. Have you ever been retained by Miss Chaber's firm before this case?
A. No.
Q. This is the first time that you've been retained by the Wartnick, Chaber firm; is that right?

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that I was first contacted.
Q. How much time have you spent preparing to testify in this case?
A. I don't know the exact amount of time. I've spent time searching through materials. Maybe about 20 hours.
Q. And when did you spend that 20 hours?

A. Mostly over time, you know, since I was originally retained, started assembling documents.
Q. You were originally retained back in the fall of 1999?
A. Correct.
Q. Is there some notation that will tell you when you were retained?
A. I opened the file on October 7th, 1999. I am assuming that I was retained a few days before that.
Q. So you spent about 20 hours in total reviewing

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materials in connection with your anticipated testimony in this case, right?
A. Correct.
Q. And what materials have you reviewed?
A. Well, I've reviewed annual reports and 10Ks for Philip Morris. I've reviewed 10Ks for R.J. Reynolds. I have reviewed the Master Agreement with States, and I've assembled some news story articles about different related to litigation issues with tobacco.
Q. And have you met with any of the attorneys for the plaintiffs in this case prior to today?
A. No. I mean -- well -- yeah, I've met them, yeah, I've met them before today, yes.
Q. When did you meet them?
MS. CHABER: You mean -- I think the confusion

is between meet and meet to discuss this case.
THE WITNESS: I met Miss Chaber last week when the jury was sent out to -- to have a meeting with her. When I came down, we never actually got to talk very much because it was all this confusion about sending the jury out at the end of the trial and nobody did anything of substance at that point.
And then I did meet with both Miss Chaber and Mr. Brown at that time and -- but we have had a brief meeting this morning in which I just indicated the materials that I have assembled and showed her what several of the materials show.
MR. ESCHER: Q. That meeting, did that take place for less than 15 minutes?
A. No. It was actually a half an hour.
Q. And you basically just described to Miss Chaber the materials you had collected?
A. That's correct, and what some of the numbers show. She was asking me if there was some information about the actual numbers of the balance sheets and the income statements on both companies and I said that there were, and I showed her some of the numbers in the 10Ks, the most recent 10K that I downloaded from the Internet.
Q. Have you reviewed any academic publications on

the subject of punitive damages in preparation for your testimony?
A. No.
Q. Have you ever reviewed any academic publications with respect to the subject of punitive damages?
A. Yes, I have in the past reviewed -- punitive damages is mostly a legal issue. There are some academic debates about it, but I have not reviewed it for the purpose of this case.
Q. Do you even remember what the contours of the academic debate are?
A. Well, is whether you treat punitive damages, for example, as a taxation and whether you analyze punitive damages, the impact of punitive damages on the cost course (phon.) as affects to a marginal cause. Things of that nature have been discussed, but that's going back some years. I've not kept current on what the current literature is on punitive damages. It's not

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a hot topic. You don't often testify on punitive damages. It doesn't come up very often.
Q. So you haven't done any research with respect to the current thinking in the academic community as to the optimal level of deterrents or any kind of theoretical issues with respect to punitive damages,

have you?
A. Correct.
Q. Let's go through the other materials you brought. The file that we were looking at, the one that says "Leslie Whiteley, PI, Robert Brown," is this your working file?
A. Yes.
Q. And it includes -- the page on top says "R.J. Reynolds" and then it has some economic data about it, about R.J. Reynolds; is that right?
A. Correct.
Q. Where do you get this information?
A. Well, there's some stock reports. I have some documents called stock reports, and I got some information from those stock reports, just a picture -- like a broad picture of how many shares and what was the recent price as of the time that I originally did this work. This particular sheet was done back in September of '99. What the market value was, what were the major brands of cigarettes that they were selling.
Q. Where did you get the information?
A. I got it from the stock reports. There's a Standard & Poors stock report.
Q. And this information was current as of, what?
A. September 17, '99.

Q. Does the testimony that you anticipate giving in this case relate to the market capitalization of R.J. Reynolds Tobacco Company or Philip Morris?
A. No. If the question arises as to whether the market thinks that Philip Morris, for example, is worth more than what its book value is, the answer is clearly yes. The market capitalization changes from day to day depending on what the price of the stock is and currently it's somewhere in the neighborhood of 49 billion or something like that. But that is not the book value of Philip Morris. The book value is somewhere around 16 billion, give or take a few millions. You just need to know it, if the question arises as what the market thinks the market value is. But I'm not testifying that the market value is necessarily the source of funds that the company has to pay punitive damage from, so -- as the fund will be the money that is in the hands of Philip Morris.
Q. By the money in the hands of Philip Morris, you mean the net book value of the company?
A. Which they report, yes.
Q. So to make sure I understand what you anticipate your testimony being, do you anticipate offering opinion as to the net book value of Philip Morris and R.J. Reynolds Tobacco Company?

A. As of the latest available which is

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December 31st, '99, yes.
Q. And --
MS. CHABER: And just on that note, we did request that we have your experts ahead of our experts because they would have more current and inside information on current values and we made it clear when you insisted that our experts go first that if we gain other additional information from them, that that information would be information that we would intend to put on through our expert.
MR. ESCHER: Item neither agreeing or disagreeing with that position. I understand you're just making that position clear for the record.
MS. CHABER: Yes.
MR. ESCHER: Q. Doctor, is there any other measure of the economic value of R.J. Reynolds Tobacco Company and Philip Morris that you anticipate giving expert testimony on in connection with this case other than the net book value that you just described?
A. In a numerical sense, I would not be able to give you a different value than the net book value as reported by the companies. I can explain the difference between book value and market value, but I do not have numbers as to the fair market value of the assets of the

company. I only have data on their book value.
So I cannot tell you that if a -- if the chairman of the board's desk was purchased for $5,000 ten years ago and on the books it's listed as $100 because it was fully depreciated, that will be the value that is indicated on the books. The fair market value of that desk may still be $5,000 if it needs to be replaced today.
So all I can explain is the difference between the fair market value and the book value, but I don't have information on the fair market value of the assets.
MR. ESCHER: Q. Let's go to the next page in your working file. This is the one that says "Philip Morris" on it?
A. Yes.
Q. And this information was current as of September 18th, 1999; is that right?
A. Correct.
Q. And did you obtain these figures from -- and other information from the same sources as you did for R.J. Reynolds?
A. Yes.
Q. I notice there's a lot more data with respect to Philip Morris than there is for R.J. Reynolds. Why is that?

A. Because R.J. Reynolds, when they broke away from RJR Nabisco, did not public -- did -- the Standard & Poors did not have a report showing what the numbers were until very recently. So there was -- I didn't have information back in September on RJR Tobacco.
Q. But you do have information with respect to RJR Tobacco to fill out the categories of information on the first page of your working file now, don't you?
A. I have -- yeah, I have partial information that

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11 I probably will be able to fill in, yes. I have -- I
12 have the 1999 -- December 31st, '99 and that 10K has
13 some data from '98. So I'm able to fill it in now.
14 Q. Let's turn to the next page which is entitled
15 "Philip Morris Companies
In??
????????????????????????????????????? 22 REPORTED BY: SUZANNE MILLER, CSR
6354 (01-90745)
23
24
25
??
????????????????????????????????????? 6
7 DEFENDANT'S EXHIBITS MARKED FOR IDENTIFICATION
8 No. Description e depo is at
24 10 o'clock this morning.
25 Q. And the next item is the notice of taking your

1 deposition; is that right?
2 A. Correct.
3 Q. Did you review the document request attached to
4 that notice in preparation for your deposition?
5 A. I did.
6 Q. And did you bring all those materials that were
7 responsive with you?
8 A. Yes.
9 Q. Are you aware of any materials that you have
10 that are responsive to these requests that you did not
11 bring with you?
12 A. No.
13 Q. The next item is Defendant R.J. Reynolds
14 Tobacco Company's Designation of Expert Witnesses; is
15 that right?
16 A. That's correct. It was sent to me.
17 Q. And that's in this case. And you have
18 highlighted the names of David Teece and Thomas Richard
19 Adams?
20 A. Correct.
21 Q. Did you do the highlighting or did someone do
22 that for you?
23 A. No. I did it.
24 Q. The next item is the Declaration of Annmarie
25 Eileraas in Support of RJR's Designation of Expert

1 Witnesses, and, once again, you have flagged and
2 highlighted material with respect to David Teece and
3 Mr. Adams; is that right?
4 A. Correct.
5 Q. Why did you do that?
6 A. Those are the two experts that might have some
7 relevance to the economic issue relating to punitive
8 damages that I'm aware of.
9 Q. When you reviewed the description of the
10 anticipated expert testimony of Dr. Teece and Mr. Adams,
11 was there anything in those descriptions that surprised
12 you or helped inform your opinions in this case?
13 MS. CHABER: Compound.
14 THE WITNESS: Surprised me in the sense that
15 they may not be relevant to the issue at hand? Yeah, I
16 thought there were some issues there I wouldn't think
17 would be relevant to the issues at hand.

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MR. ESCHER: Q. What issues would those be?
A. Well, the impact on technology and consumers and farmers and things like that which I don't believe are relevant to the issue in this case.
Q. That's a legal determination, isn't it, what's legally relevant? I mean, you're not an expert on what's relevant to the punitive damage portion of this case in terms of the legal standards, are you?

A. No, I'm not pretending to be a lawyer.
Q. The next set of materials in your working file are a bunch of handwritten notes regarding phone calls; is that right?
A. Changes in the depositions. There was a notice of my deposition back in October or something like that, and then they negotiated changes in the dates and the deposition and it went back and forth.
Q. Is this your handwriting or the handwriting of your assistant?
A. My secretary.
Q. And
th??
??Y, A LegaLink Company (415) 512-1234
versus Stoner & Company in Alameda in 1998 -- no. The

??
??? Q. This is the first time that you've been
retained by the Wartnick, Chaber firm; is that right?
ile, look like some notes dated October 5,
1999. They're your notes of a phone conversation with Bob Brown; is that right?
A. Yes.
Q. And item 4 is, "he would like me to testify as

to the net worth of the defendant tobacco companies"?
A. Correct.
Q. And that's what you anticipate testifying to; is that right?
A. Correct.
Q. And by "net worth," you mean the net book value of the companies?
A. Correct.
Q. And on the last page, this is just your file materials?
A. Yes.
Q. Let's go to the next folder. It says "various" on it.
A. Yeah, various stories.
Q. These are news reports?
A. News stories, yes.
Q. Are any of these news stories relevant to your opinions in this case?
A. Well, they may be, depending on what question you're going to ask me.
Q. In reviewing these news stories, did your review of these news stories change your opinion in any way?
MS. CHABER: Vague and ambiguous.
THE WITNESS: I don't know what you mean by

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change my opinion. It didn't change my opinion about the net worth.

MR. ESCHER: Q. But you --

A. But it tells you different things about different topics. The different stories relate to different issues.

Q. Do you anticipate testifying about anything other than the net book value of R.J. Reynolds Tobacco Company and Philip Morris in this case?

MS. CHABER: Calls for speculation.

THE WITNESS: It depends what I'm asked. If you raise a certain question whether, for example, cigarette prices have been increasing, how would I know to answer you unless I had reviewed some stories about the increase in the price of cigarettes.

MR. ESCHER: Q. Of course you're not an expert on the cigarette industry, are you?

A. No.

Q. Have you ever done any work relating to the cigarette industry before today?

A. No.

Q. Let's look at the next folder. This one says "Philip Morris Companies Inc., Form 10Ks." That's exactly what's in this file, right?

A. Correct.

Q. I see some blue post-its with some handwriting on them. Those are just signals for what information is contained where in the 10K?

A. Yes.

Q. I see an entry for operating income. You don't view operating income as the appropriate measure with respect to the issue of punitive damages, do you? I thought you said it was net book value.

A. When you analyze a company's net worth, which is the book value of the equity that it has, you also have to understand that the income of the company is important because ultimately it affects that net worth over time and you need to be familiar with what the income is doing in order to be able to say what is likely to happen to the net worth.

So it just tells you how much money the company is making at a given moment in time or in a given year.

Q. So it could affect the net book value eventually over time, but the operating income by itself isn't the measure that you're looking to with respect to your opinions as to what the -- what the appropriate numerical index would be for assessing punitive damages in this case?

A. Well, I'm not going to be the person to decide what information the jury wants to know about the

companies in terms of assessing punitive damages. They can decide to assess it based on income, net worth or anything else depending on the instructions, depending on their deliberation, et cetera.

I'm just trying to familiarize myself so that if I am asked a question, did Philip Morris have sales in 1999? Yes. How many dollars? Did it have profits? Yes. How many dollars? Did it have a net worth? Did

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it have assets? Did it have liabilities, et cetera. I can answer those questions. So I have to identify where it is so that I can testify to it.

Q. In terms of answering the questions you just described with respect to Philip Morris, would you need to do anything other than look at the financial documents of the companies?

A. Well, depending on the complexity of the question.

Q. So, for example, the issue of net book value for Philip Morris, what would you do to determine that?

A. I'd look at the balance sheet as they reported it. But that's a simple question.

Q. Now if you were to look at the net book value for R.J. Reynolds Tobacco Company, would you simply look at the financial statement as well?

A. Yes, as they reported it on their 10K.

Q. If you were to determine the operating income of R.J. Reynolds Tobacco Company for the year 1999, would you simply look at that same financial statement?

A. I'd look at the income or the operating income statement, not the balance sheet.

Q. And would the same be true for Philip Morris, that is, you'd simply look at the publicly available financial documents to come up with that number?

A. Correct. We are not auditing the books of either one of those companies.

Q. Do you anticipate offering an expert opinion in this case as to the net book value of R.J. Reynolds Tobacco Company and Philip Morris?

A. Yes.

Q. Do you anticipate offering any other expert opinions in this case?

MS. CHABER: Calls for speculation.

THE WITNESS: It depends on what I'm asked.

MR. ESCHER: Q. Do you anticipate being asked for an expert opinion with respect to any other subject in connection with your testimony in this case?

MS. CHABER: Calls for speculation.

THE WITNESS: I don't know.

MR. ESCHER: Q. But you do anticipate being asked with respect to the net book value of Philip

Morris and R.J. Reynolds Tobacco Company?

A. Absolutely.

Q. About how many times have you offered an expert opinion with respect to the net book value of a company?

A. How many times I've been asked in deposition or trial?

Q. Yes.

A. 50 times, roughly.

Q. And all of those occasions, would you simply go look at the financial statements or the profit and loss statements or the other accounting materials that are provided by the company?

A. Correct.

Q. Let's look at the -- at the file for Philip Morris Companies Inc., the form 10Ks. Where would you go to find the net book value of Philip Morris?

A. You'd go to the balance sheet as they are

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reported. It's called a consolidated balance sheet, and they show what they believe their book value of net worth at 15,305,000,000. They round it to the nearest million.

Q. You're simply reading from the balance sheet now?

A. Correct.

Q. If you were to do the same thing for

R.J. Reynolds Tobacco Company --

A. You'll have to go to this 10K.

Q. Okay, let's go look at that.

MR. BARRON: While he does it, it might be helpful if he marked these so the record is clear and maybe you can get a page number so we can track this.

MR. ESCHER: Okay. Tell you what, this is the only copy I've got for now, so let me simply refer to it.

Q. When you refer to the balance sheet on the 10K for Philip Morris Companies --

A. I'll tell you which page it is.

Q. -- it's page 37; is that right?

A. No. It's actually page 36. You see that it -- it -- it's 35 -- well, I don't know. It's probably page 36 of -- is where the balance sheet starts, page 36 of their 10K for 405, and it may be that they -- the total stockholder equity book value is shown on page 37, but I cannot tell whether the pages are at the bottom or at the top of the page because of the way it was downloading.

Q. Let's turn to R.J. Reynolds Tobacco Company now.

MR. BARRON: May I see that.

THE WITNESS: They report as of December 31st,

'99 on page 18 or 19, probably 19, their net worth at 7,064,00,00.

MR. ESCHER: Q. What was Philip Morris' again?

A. 15,305,000,000. This is 7 billion. They report 7 billion.

Q. And you're looking on page 19, right?

A. Well, it may be 19. It's hard to tell, but I think you can assume that it's page 19.

Q. Let's finish going through the materials. We had looked at the 10K for Philip Morris. The file you're looking at now says "R.J. Reynolds Tobacco stock."

A. This is the 10K.

Q. The 10K and it's dated March 8th, 2000 and covers a period through December 31st, 1999, right?

A. Correct.

Q. What are these other materials that are included in your file?

A. Those are the stock reports that I originally looked at back in September to try to summarize the information that you looked at in my working file, and they came in from September and then there is some other newer reports in there, some other stock reports.

Q. Stock reports, these would be by analysts for different investment companies?

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A. Correct. Standard & Poors is the traditional company that looks -- that summarizes the information provided by companies in a service that is then available, and this one that you're looking at is from Credit Suisse or Credit Suisse, depending on how you pronounce it, and it's S-u-i-s-s-e, for the purpose of the court reporter.

And that's the fourth quarter and full year results of R.J. Reynolds and it summarizes the -- some of the financial information about the company.

Q. Now have you done any analysis of how R.J. Reynolds Tobacco Company values its assets as part of the balance sheet that you've indicated results in a net book value as of December 31st, 1999 of approximately $7 billion?

A. They don't value their assets at $7 billion.

Q. No, I understand that. But the value of the assets is, what, of approximately $14.3 billion?

A. Yes, they value their -- at about 14.377 -- 14.377 billion is the way they value their assets. I'm assuming it's book value of assets.

Q. Have you done any analysis of that figure as reported in the 10K for R.J. Reynolds Tobacco Company?

A. I don't know what you mean by analysis. Do I know how they arrived at it?

Q. That's right.

A. No. I'm assuming that they added all their assets, cash receivables, all of their equipment, buildings, furniture, computers, et cetera.

Q. Right. So would you include goodwill, for example?

A. If they specifically put it on the balance sheet. If they bought some goodwill, they can put it on the balance sheet and they would have a figure. If they never bought any other company -- company's goodwill, it would not be part of the balance sheet.

Q. Well, let's turn to the assets portion of this balance sheet. Can you try and find where that is in this 10K?

A. I don't recall whether they had a detailed balance sheet.

Yeah, here it is. On page 36, they -- they value cash, short-term investments, accounts and notes, inventories, deferred income, property, plant and equipment, total property and equipment, all less accumulated depreciation, trademarks, goodwill and other assets.

Q. What is the figure for trademark, goodwill and other assets?

A. Trademarks is valued net of amortization at 3

billion, and goodwill net of accumulated amortization is valued -- net amortization is at 7.5 billion.

Q. 7.5 billion. That's more than the net book value amount, isn't it?

A. Yes.

Q. So without the goodwill, the net book value of R.J. Reynolds Tobacco Company as of December 31st, 1999 would be negative; is that right?

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A. Yeah, it could.
Q. What's your understanding as an economist as to what goes into the category of goodwill on a balance sheet?
A. It's what they paid when they bought somebody else. If they paid above the market value of the assets that were purchased, it was classified as goodwill and it's amortized over time. They depreciated it at two and a half billion dollars in 1998 and about $2.8 billion in 1999. So it's an amount of money that they are continuously depreciating with which they have paid sometime in the past.
Q. So, for example, if they paid $10 million for something that now is worth only $2 million, the $8 million gap would show up as a gap; is that right?
A. More or less. Say -- say I was buying your company and you had a building and everybody -- and

that's all you had. Let's assume that was the only asset. And everybody agrees that the fair market value of your building was a million dollars, but I bought your business, going concern value, and I paid you $3 million in total. Then $1 million will be classified as purchasing the building, which I will then depreciate as a building, and the $2 million will be considered to be the goodwill value that I acquired, assuming no other assets or liabilities were acquired. At that point I can then start depreciating or amortizing, a nice word, my goodwill.
Q. So do you have any understanding as to what the goodwill of R.J. Reynolds Tobacco Company is composed of as shown in that balance sheet?
A. It's composed of what is left over after they amortized it over the years from something they acquired in the past. I do not know what they acquired in the past, but it's part of their operations that they acquired some -- some company at some point.
Q. Well, is there any reason to think that R.J. Reynolds Tobacco Company could sell the goodwill that's described in the balance sheet for $7 billion?
A. We don't know.
Q. Wouldn't you anticipate that, in fact, goodwill in that sort of an amount on a balance sheet like that

one is probably not the same as having $7 billion worth of cash?
MS. CHABER: Calls for speculation. Vague and ambiguous.
THE WITNESS: You can say that for any asset that is not liquid. You're distinguishing degrees of liquidity. RJR sold its international tobacco operations for $7 billion. I don't know, what do you think they sold? Brands? Equipment? What did they sell for $7 billion? You can convert an asset to cash. The degree to which you'll be able to convert it to cash depends on whether its fair market value is equal to, greater than or lesser than what's kept on the books.
MR. ESCHER: Q. What's kept on the books may have no relationship to the fair market value of the assets?
A. In both directions, that is correct.

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Q. Okay. The next item we've got is a binder entitled "The Tobacco Industry Master Settlement Agreement (with States' Attorney's General.)"
A. Correct.
Q. Did the plaintiffs' attorneys give you this document?
A. No. I downloaded it.
Q. When I refer to this agreement, I'd like you to

call it the Master Settlement Agreement or the MSA. Will you understand that's what I'm referring to?
A. That's what it's called, Master Settlement Agreement.
Q. Philip Morris Companies Inc. Annual Reports, and that's exactly what's in it?
A. Five years of annual reports, starting in '94 and ending in '98.
Q. I see some flags on these annual reports. What are those; related to the balance sheets?
A. The balance sheets and the income statements and selected financial data that they reported on their annual reports.
Q. Looking at the Philip Morris 1998 annual report, what you flagged, see there's an entry there for goodwill and other intangible assets?
A. Yes.
Q. And it says less accumulated amortization of -- excuse me -- is it 5,436,000 and 4,814,000? Am I reading that right? Is it 5 billion and 4 billion?
A. That's correct. That's a little better. When you talk about Philip Morris, don't use the word millions too often because it doesn't apply.
Q. What's accumulated amortization? Is that the accounting process you referred to earlier?

A. That's correct, that you amortize the goodwill.
Q. What does accumulated amortization mean in this context?
A. That's the accumulated as of the end of the year. So as of December 31st, 1997, the accumulated was 4,814,000,000, and when it comes to the December 31st, they accumulated to 5,436,000,000. That means that originally they paid for that goodwill and intangible assets somewhere in the neighborhood of 22 billion and they have since written off about 5 billion, leaving about 17 billion to be the book value of the goodwill.
Q. The last folder is entitled "Philip Morris Stock Reports."
A. Yeah.
Q. Why don't you describe for us what's in this file.
A. Well, they're basically the stock reports, the various stock reports that -- including the Credit Suisse report of the fourth quarter in '99 and year-end results that has some global reports from Credit Suisse. This Standard & Poors report, that gives information which is not equally available for RJR because of the breakup between RJR and Nabisco. But this takes you back as to what the value was, the income statement, the balance sheet, and I used that September report for my

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working file summary where it showed the sales that they -- assets and liabilities.

It has the one from November and one from February, and then there's a couple of stories, one from Kiplinger and one from -- I believe that's from Forbes, Daniel Kadlec writing about Philip Morris stock prices and whether it's a good buy or not.

It also includes some recommendations from Bloomberg. Bloomberg has a summary of all of the people who recommend the purchase of Philip Morris, stuff like that in it. That's basically what this file contains.

Q. Have we gone through all of the files you brought with you? How about this one?

A. This is the file that had the CV --

MS. CHABER: The working file.

THE WITNESS: No. I gave you a CV. I carry my CV.

MR. ESCHER: Q. There are some notes, as well?

A. That's the notes that I gave you, the Phillips versus Farmers Insurance and the MF Bank versus Stoner. And I've accumulated a list of a few -- just briefly, a few of the depo testimony regarding punitive damages, Vincent versus New England Life Insurance, Dick versus Paul Revere, Rayna versus Monarch, Hill versus Mendocino Beverage International, Phillip versus Farmers Insurance

Group. That was a deposition on this case.

These are a few depos that I've had in 1998 and 1997.

Q. Let's go through them. The Phillips versus Farmers Insurance case, was that an insurance bad faith case?

A. That's correct. It was a trial.

Q. Did you testify for the plaintiff or Farmers Insurance?

A. For the plaintiff. Farmers did not have an expert in this case. They sent their own CEO to testify they needed all the money.

Q. Was the content of your testimony in the Phillips versus Farmers Insurance case an analysis of a net book value of Farmers Insurance?

A. And their income statement.

Q. Did you offer an opinion as to what the appropriate amount of punitive damages would be?

A. No.

Q. Let's try the next one. Is that MF Bank versus Stoner & Company?

A. Correct.

Q. That was a trial, as well?

A. Correct.

Q. And who did you offer expert testimony on

behalf of in that case?

A. I don't remember whether I was -- it was on behalf of one of them as to the value of the other, but I don't remember. I mean, I believe it was the value of MF Bank.

Q. And you were analyzing that from the perspective of its net book value?

A. Yes.

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Q. And once again, you didn't offer expert testimony with respect to the appropriate amount of punitive damages, did you?
A. I'm never asked that question.
Q. Let's go to the next one which is the list of deposition testimony.
A. And it's not a complete list. It's just as fast as I could do it at 10 o'clock at night.
Q. Vincent versus New England Life Insurance Company, is that another insurance bad faith case?
A. Correct.
Q. And did you offer expert testimony as to the net book value of New England Life Insurance Company?
A. And their income, yes.
Q. How about --
A. In each of these cases -- to make it simple for you, in each of those cases I testified as to the net

worth that the company states in its financial statements as well as the income that they generated on an annual basis and the net worth over time.
Q. How about -- and that would be true -- how about the Mendocino Beverage International case, what was that one about?
A. That was likewise, I valued -- I evaluated their financial records to testify in a deposition as to what they were worth.
Q. Is there anything else in this file?
A. Just my CVs.
Do you want a copy of this?
MR. ESCHER: Let's take a five-minute break.
MS. CHABER: Let's take a five-minute break.
(Recess from 11:24 to 11:39.)
MR. ESCHER: Q. Could you turn back to the R.J. Reynolds Tobacco Holdings 10K. The two post-its you have flagging materials --
A. Well, there are several pages that are devoted to financial information. I -- I started putting post-its when it starts, basically, and there are all kinds of pages that have to do with financials and notes and so on that proceed, and then the balance sheet, the consolidated statement of income and cash flow is on page 33, 34, 35.

Q. So looking at page 19 of the R.J. Reynolds Tobacco Company 10K, this shows a loss from continuing operations in the year 1998; is that right?
A. Correct.
Q. What does "continuing operations" mean?
A. From the operations that they had in that year; those that were not discontinued.
Q. Do you think that the income or loss from continuing operations is relevant to your analysis of the net book value?
A. You're mixing two concepts. Income or net profit from continuing operation is a flow concept. The book value of net worth is a stock concept. They are not related to each other except that ultimately the stream of income affects your wealth.
Q. Right.
A. If you have continuing losses, your -- all

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other things being equal, your net worth will decline. And if you have profits, your net worth will increase as a generalization.

So they are not related directly, but they are related in the ultimate question: they can affect each other.

Q. Well, it's your understanding that the net book value of the company is the relevant figure for the

determination by the jury of what the punitive damages in the case would be if they decide to impose them?

A. I'm not expressing a legal opinion as to what is the relevant economic data for them to look at in deciding what the punitive damages should be. But if the question is what is the wealth of the corporation as it states it to be, then the net book value of its equity is the relevant measure to answer that question.

Q. Okay. So looking at R.J. Reynolds Tobacco Company's 10K again for a moment, for the year 1998 it shows the net book value as being $9,886,000,000.

A. Correct.

Q. And that -- but in that year it shows a net loss from operations of $519 million?

A. Correct. But that's already -- the net worth is already after that loss. The loss was during the year, and the net worth is as of the end of the year. So the net worth remaining in the end of 1998 is after they experienced some loss of 519, not before.

Q. Right, and looking at this financial information for R.J. Reynolds Tobacco Company, it shows a decline in the net book value from 9,886,000,000 in 1998 to 7,064,000,000 in 1999, right?

A. Correct.

Q. But, of course, it shows net income of

2,343,000,000 in the year 1999, right?

A. Correct.

Q. But looking at the difference between the net book values, wouldn't you say that R.J. Reynolds Tobacco Company is poorer in 1999 than it was in 1998?

A. On its books, it certainly is.

Q. Isn't it your understanding that the $2,343,000,000 dollar-figure for net income in the year 1999 relates to the sale of its international operations to Japan Tobacco Incorporated?

MS. CHABER: Can I have that question read back. I need to hear that again.

(Record read as follows:

"Isn't it your understanding that the $2,343,000,000 dollar-figure for net income in the year 1999 relates to the sale of its international operations to Japan Tobacco

??????????????

about $1,229,000,000 in profit, according to their own statement.

You're looking at two different things, so you have to bear with me. If you're looking at operations, they reported the net sales in the year 1999 to be about $7.5 billion. The cost of the product that they sold, which included the payments for the various settlements associated with the Master Agreements and others, was included in the 3.292 billion in the cost of goods sold, so they netted approximately one -- a quarter billion dollars from the continuing operation in 1999.

MR. ESCHER: Q. But in 1998, they --

A. 1998 was not a good year for them. They only made $141 million.

Q. Out of sales of 5,516,000,000?

A. Correct.

Q. Just so I understand your testimony, your taking into account the operating income of the companies is relevant to your testimony because that operating income has an effect over time on the net book value of the company?

A. Among other things, depending on what it is that you do. If you depreciate goodwill every time you write off a certain amount of depreciation, that reduces the net worth -- the book value of the net worth. So

if, for example, you have goodwill that you're depreciating at $2 billion a year or whatever, that will reduce your net worth by $2 billion. Then whatever profits you have left after you've paid all of the expenses and taxes and so on and settlements, that will add to your net worth if it's still positive, and will subtract if it's negative.

So it does affect it over time, yes.

MR. ESCHER: Let's go off the record for a second.

(Discussion off the record at 11:49.)

MR. ESCHER: Q. Let's turn back to your CV. When were you born, Doctor?

A. I was born in 1939.

Q. And you received your bachelor's in economics at the Sonoma State University in 1965; is that right?

A. Yes.

(Discussion off the record at 11:50.)

MR. ESCHER: Q. So you were 26 years old when you received your bachelor's degree; is that right?

A. Yes.

Q. Had you received any university education prior to going to Sonoma State University?

A. Yes, I -- I went to Contra Costa Junior College and I went to Santa Rosa Junior College and I went to --

then I went to Sonoma State and then I went to the University of Oregon.

Q. Well, let's --

A. But I didn't get any terminal degrees until my BA.

Q. Let's go back a little bit in time. Where did you grow up?

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A. I grew up in Israel.
Q. When did you move to the United States?
A. In 1960.
Q. And so you were 21 years old at that time?
A. Yes.
Q. Had you attended university in Israel at all?
A. Not per se. I took some external courses in drafting and engineering, but I did not officially -- I was not officially enrolled in a, quote, daytime university program. I was in the Israeli Air Force.
Q. And so you came to this country when you were about age 21.
A. 21, almost 22.
Q. Which educational institution did you attend first?
A. Contra Costa Junior College.
Q. And what did you study there?
A. It was called GE, general education. I was

doing premed program. My mother wanted -- was hoping.
MS. CHABER: We've all disappointed our mothers.
No, you haven't. Your mom's very happy.
MR. ESCHER: Q. How long did you attend Contra Costa Junior College?
A. Three years.
Q. And did you receive any degree from Contra Costa Junior College?
A. No.
Q. Did you speak English when you came to the United States?
A. A little bit.
Q. Little bit. And that's part of what you were learning in junior college was how to speak English better?
A. That's correct.
Q. Where did you go after Contra Costa Junior College?
A. I went to Santa Rosa Junior College for one summer and -- to finish a course in history that I needed that I never took at Contra Costa and then went to Sonoma State and stayed at Sonoma State from 1963 to 1965, got a scholarship to go to the University of Oregon in 1965, stayed there for four years, was working

on my dissertation when I started teaching at Sonoma State in 1969, finished a degree by December 1972, the degree was granted in June of '73.
Q. What was your dissertation on?
A. It was on export diversification.
Q. You've never published anything on punitive damages, have you?
A. No.
Q. And you've been at Sonoma State since 1969; is that right?
A. Yeah. The chagrin on your face suggests it's been a long time.
Q. About how much of your time do you spend on forensic economics?
A. Nowadays, about 50 percent of my working time.
Q. And how much do you charge an hour?

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A. For depositions, 390.
Q. And for trial testimony?
A. Likewise.
Q. And you charge on a per hour basis?
A. Correct.
Q. Strictly? You don't have a per day charge or anything like that?
A. The California Code of Civil Procedure does not allow charging a per day in deposition; only on the

actual number of hours spent in deposition.
Q. How about the time you spend at trial, do you charge on a per day basis or per hour basis?
A. Per hour.
Q. Have you ever taught a class that included punitive damages as one of its subjects?
A. No. I've -- it's not a major topic in the undergraduate curriculum or even in managerial economics at the M.B.A. level. We don't really talk about punitive damages. I lectured once on punitive damages to the economics club as part of my lecture on forensic economics, but that's about it.
Q. Now Sonoma State University, do you teach graduate students there?
A. I -- from time to time. I teach at the M.B.A. program which they're called the graduate program. We don't have a graduate degree in economics. We are in the School of Business in Economics. The economics department does not have a graduate degree, but the School of Business in Economics has an M.B.A. and I teach the managerial -- the seven-hour managerial economics, not this year but I have taught it in the past.
Q. What courses have you taught this year?
A. This year I taught the microeconomic theory

classes at the introductory and advanced levels.
Q. That's your undergraduates?
A. That's correct.
Q. What is your understanding of what the legal standard for the award of punitive damages is?
MS. CHABER: Objection. Calls for a legal conclusion.
MR. ESCHER: I'm just asking for his understanding.
MS. CHABER: Well, that's beyond the scope of expert testimony. He's being offered as an economist, not for legal --
MR. ESCHER: Q. Okay. Answer the question, please, if you can.
A. My general understanding of the purpose of punitive damages is to punish and deter.
Q. Do you have a general understanding as to the role of the defendant's wealth in the determination of punitive damages?
MS. CHABER: Same objection.
THE WITNESS: Usually people who ask me to testify in the punitive damage phase of a trial want to know what the wealth of the defendant is. Apparently it's important from the legal point of view to know how wealthy the defendant is.

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MR. ESCHER: Q. Is that as much as you know about it, about the legal standard?
A. That's as much as I know or want to know.
MR. ESCHER: Let's go ahead and mark the notice as Exhibit 2, please.
(Defendant's Exhibit 2 was marked for identification.)
MR. ESCHER: Q. Dr. Ben-Zion I've marked the Notice of Taking Deposition along with Request for Production of Documents dated March 10, 2000 as Exhibit 2. This is the same document that we saw in your file; is that right?
A. Correct.
Q. And you previously testified that you had reviewed your files and brought all of the material with you that was called for in connection with this?
A. As much as I had. I obviously did not respond to everything if I didn't have it.
Q. When did you download the MSA?
A. Oh, about a week ago.
Q. Did you read the whole thing?
A. No. I read parts of it.
Q. Which parts did you read?
A. I read the payments part and some of the provisions in it.

Q. Can you give any more detail than that?
A. Well, if you give it to me, I'll tell you --
Q. Sure.
A. -- what parts I read. I read -- I perused most of it, but I read primarily the payments, some of the definitions, the adjustments. That's about what I read with some degree of interest.
Some other -- I perused most of it. I kind of looked to see if there's any segment that was particularly interesting. That's about it.
Q. Now you're not an accountant, are you?
A. I'm not an accountant? No.
Q. And notions of how to treat goodwill or amortization of goodwill over time, those are really accounting concepts, aren't they?
A. Well, how to amortize goodwill is an accounting decision. The concept, however, is derived ultimately from an economic concept of the fact the government allows you to amortize any asset that you buy over some period of time, and it gives rise to the amortization schedules.
Q. From your review of the 10Ks for R.J. Reynolds and Philip Morris, could you describe for us in general terms how those two companies are doing?
MS. CHABER: Vague and ambiguous. Overbroad.

THE WITNESS: Well, in terms of their profitability, you mean in terms of what they're operating in 1999? Well, they state how well they're doing in their own financial statements, in their income statements. I can show you where they show the numbers.
MR. ESCHER: Q. Let's start --
A. Are you talking about in comparison to 1998 or

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in comparison to 1988? I mean, what are we talking about?
Q. Let's compare it to 1998.
A. They're doing much better in 1999 than in 1998.
Q. They did very badly in 1998, right?
A. Yeah. They haven't adjusted prices yet. Revenues have increased dramatically between '98 and '99 because of price increases, primarily.
Q. Now the stock price for both companies is down substantially, isn't it?
A. Correct.
Q. And it's down substantially from what it was a year ago; isn't that right?
A. Absolutely.
Q. And that's in a stock market environment where many stocks are up; isn't that right?
A. Correct. Not necessarily. All profitable companies are not necessarily doing well. Companies

that are not showing any profits are doing remarkably well in this market.
MS. CHABER: With no capitalization, no anything.
MR. ESCHER: Q. Is it fair to say that current operating income isn't necessarily a good idea as to what future wealth is going to be?
A. That's certainly correct.
Q. Have you done any analysis of either Philip Morris or R.J. Reynolds Tobacco Company with respect to their operations in California?
A. No.
Q. From your review of the MSA, you saw that the tobacco companies are going to have to pay the various states a great deal of money over time; isn't that right?
MS. CHABER: Vague and ambiguous.
THE WITNESS: Yeah, they promised to pay over time something in the neighborhood of $206 billion unless the cigarette sales fall or the average price revenue per cigarette does not meet certain expectations in the United States.
MR. ESCHER: Q. Don't you view those payments as being punitive in character?
A. I didn't think that they were described as

punitive. The agreement was with the states to pay what I understood past medical expenses or possibly future medical expenses. Is any settlement of any case punitive? I don't think so. I don't -- I didn't classify them as punitive.
I don't think the companies are treating them as punitive. They are writing them off as an expense. If it was assessed as a penalty, they wouldn't be able to deduct it as an expense, would they?
Q. Isn't it true that the MSA contains a number of provisions that limit and regulate the way the companies are going to do business going forward?
A. Absolutely.
Q. Did you review those provisions?
A. I perused them, but I'm not making a projection of how it will affect their bottom line.

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Q. And so those provisions are not going to have any effect on your expert testimony in this case?
MS. CHABER: Well, that calls for speculation.
THE WITNESS: Which provision?
MR. ESCHER: Q. The provisions I'm referring to being the regulations with respect to how the companies will do business in the future.
A. Well, no, I have not done an analysis. Neither are the companies suggesting in the 10K in the analysis

of how it will affect their business practices in the future or their bottom line. They only mention it in their 10K that they made such an agreement, but they don't give a projection of how it will affect their bottom line.
Q. Now are you aware of any other pending lawsuits that assert punitive damage claims against the tobacco companies?
A. The 10Ks list many legal cases that have been filed against the tobacco companies and I don't know whether there is any provision of punitive damages or request for punitive damages in any one of them. You'll have to -- they list almost each and every case, but it doesn't necessarily mean that there have been punitive damages asserted in those cases.
Q. That's something that you just don't know about; is that fair?
A. Well, I can only know what they tell me. If they tell me that there was a punitive damage award, they are appealing or something like that, then I know about it. If they don't tell me or if they list a number of cases that have been filed and they don't tell you what was filed and whether punitive damages are being requested or not, how would I know?
Q. What do you know on the subject of other cases

involving punitive damage claims against either Philip Morris or R.J. Reynolds Tobacco Company?
A. I don't know as I'm sitting here to recite to you anything specific except that I noticed in the 10K that they have a whole list of cases that have been filed against them by both individuals and by groups, some of which have potentially punitive damage requests, but I do not know. It doesn't say.
Q. Do you own stock in either Philip Morris or R.J. Reynolds Tobacco Company?
A. Yes.
Q. Which one?
A. I own Philip Morris.
Q. And how many shares of Philip Morris do you own?
A. 300.
Q. When did you buy them?
A. When the price hit about 20.
Q. What's the price at now?
A. 19.57.
Q. So you bought it recently?
A. Yes.
Q. You haven't done any analysis of the market capitalization of either Philip Morris or R.J. Reynolds Tobacco Company?

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A. I know what it is.
Q. But it's not relevant to your anticipated testimony, is it?
MS. CHABER: Well, calls for speculation at this point.
THE WITNESS: I have not determined -- I cannot determine the relevance of the question of market capitalization. Somebody else will have to decide on that issue. But it's a simple thing that you can do. Almost every day, it will be slightly different. You have to know how much shares are outstanding, which is relatively easy to know, multiply it by a price. As I told you in the last deposition, last time I looked, Philip Morris was at about 49 billion, but I don't remember what RJR was.
MR. ESCHER: Q. Don't you anticipate that the trends for both Philip Morris and R.J. Reynolds Tobacco Company are negative?
MS. CHABER: Calls for speculation. Vague and ambiguous. What do you mean by "trends"?
THE WITNESS: Are you talking about their profit trends or their revenue trends or what?
MR. ESCHER: Q. Let's try this. Let's try the size of the cigarette market in the United States. That trend will be negative for those two companies, wouldn't

it?
MS. CHABER: Calls for speculation.
THE WITNESS: You're talking about in terms of volume or dollar revenues? Dollar revenues, it's going up substantially. In terms of volume, yeah, there has been a decline in the volume of cigarettes. When you raise prices, even in economic demand, quantities go down. But revenues have gone up. So if you define the market in dollar terms, it's been a nice increase in the last year, about 20 billion.
MR. ESCHER: Q. And that's just in the last year; is that right?
A. Yeah, with seeing six or seven price increases in the last two years.
Q. Have you done any analysis of the relationship between current assets and current liabilities for either one of the defendants?
A. I have not done a specific analysis if you mean by "analyzing" what they consist of, but current assets and current liabilities are written in the balance sheets.
Q. And do you --
A. You can -- you can ask me and I can look it up and I can tell you what it is.
Q. Just like you could for the net book value?

A. Absolutely.
Q. That's something we could simply read on the document?
A. That's correct. Assuming that the finder of fact knows what it is that you are talking about.
Q. Now do you think that the relationship between current assets and current liabilities is relevant to

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your anticipated testimony in this case?
A. I cannot decide what is legally relevant and I cannot decide what will be asked of me.
Q. You anticipate giving testimony with respect to the net book value of both R.J. Reynolds Tobacco Company and Philip Morris?
MS. CHABER: Calls for speculation.
THE WITNESS: I really don't know. I'm assuming so, but I cannot tell.
MR. ESCHER: I don't think I have any further questions for you.
Gerry, do you want to go ahead?
MR. BARRON: I have a few.
EXAMINATION BY MR. BARRON
MR. BARRON: Q. Good afternoon, Doctor. I didn't get a chance to introduce myself. I'm Gerry Barron, and I represent Philip Morris Incorporated.
Would you turn to the deposition Notice for

your deposition today and look at Schedule A with me.
A. Yes, sir.
Q. Category C asks for all expert billing records pertaining to the case. From the fact that there haven't been any placed on the table thus far, am I correct in concluding that you've not billed at all thus far?
A. Correct.
Q. Is that your normal practice not to bill until some point in time after you've testified?
A. Or until something is concluded, yes, that's my normal practice.
MS. CHABER: I would point out, Gerry, it's the normal practice in California to bring a check for the expert, neither of which defendant brought one, but we're proceeding anyway on the good faith that I guess Philip Morris and R.J. Reynolds will be able to pay.
MR. ESCHER: I'll try and get you one this afternoon. Just tell us how much it is.
MS. CHABER: You can calculate the time.
MR. BARRON: Q. I'm sorry. Would you state, as clearly as you can, what your normal practice is concerning the timing of your billing?
A. Usually when a project is concluded, we bill it and that's the normal practice. Now what sometimes

happens is that we will conclude and wait for a trial and then there will be, say, a six-month delay in the trial, then we'd issue a bill. We would not wait an extra six months for that. And then we will send the bill at that point.
Q. By what time had you concluded your work necessary to have developed and support all opinions you might have?
MS. CHABER: Last night at --
THE WITNESS: No, no, no.
MR. BARRON: Why don't you have him testify even though I know it's in good humor, Madelyn, but let's let him testify.
THE WITNESS: The 10Ks were downloaded the day before yesterday. They were not available -- the 10K from Philip Morris did not appear to be available in the

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computer until the day before yesterday, the one for '99. The '98 was downloaded a couple of days before that because I already had the '98 annual report. So it wasn't as important to me. The 10K for R.J. Reynolds was downloaded the day before yesterday.

So it wasn't until the day before yesterday that I had an opportunity to look at those and so, in a sense, you could say the night before last is when I concluded my review of the 10Ks.

MR. BARRON: Q. Now how have you kept track of the time that you've spent from the time that you were first contacted by Mr. Brown on or about October 5, 1999 up to the present time?

A. I have time sheets when I work. I perform a particular function and I put it down.

Q. And you don't have those time sheets available here today?

A. That's correct because they're not -- they're mixed with time sheets for all other cases. So when it comes to billing, the secretary has to pick up all the time sheets and get the right lines for the right case to put it together, to put a bill. And my secretary went to the hospital a week ago to have a baby, which she had this Saturday. So last night I wasn't going to spend the six or five hours necessary to find all the time sheets.

Q. I understand. And congratulations to her and I assume it all went well.

A. It did.

Q. Good. But before you testify, if you do in this case, you could produce the consolidated statement of hours to date or if you couldn't for some reason of employee unavailability, you could go back and collect the raw time sheets so that one could be able to

precisely know when you spent time and how you spent time; is that correct?

A. Correct. Depending unless I testify this afternoon.

Q. If you do not testify today, I am going to request that when you testify that you bring that because I think it was fairly called for. I'm not criticizing the fact you don't have it now.

MS. CHABER: You can make that request, Counsel, and you should make it through me. And I don't necessarily agree with you that it's called for. And I think the doctor gave you a very nice estimate of how much time he spent.

MR. BARRON: Q. Do you have any problem giving those records if the lawyer who has retained you allows you to do that?

A. I will -- if I have time to put it together in her absence, I will try to do that. I don't know what my time commitments will be between now and then, but I will try to give you a better estimate or better record of my time.

Q. Category F asks for documents provided to you, first of all, by plaintiffs' counsel. Have any been provided to you?

A. Not that I know of.

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Q. And --
A. You're not talking about just a call about a deposition; you're talking about actual documents?
Q. Correct.
A. Not that I'm aware of, other than -- I'm sorry -- the disclosure of the expert witnesses on the part of the other side, the notice of my deposition that was in October or November and the fax of the Notice of Deposition for today.
Q. But no documents were provided to you by plaintiffs' counsel that were relevant to your analysis of any aspect of the financial condition of either defendant including but not limited to that defendant's net worth, correct?
A. Correct.
Q. And does that hold true also for the latter part of the request; that is, for any documents provided by other expert witnesses?
A. I have not received any other documents from any other expert witnesses.
Q. Do you know whether or not there are any other expert witnesses for the plaintiff on this issue of the financial condition of the defendants?
A. I do not.
Q. And category K talks about lecture notes, and

you haven't produced any because none exist for the topics called out for by that category K; is that true?
A. Correct.
Q. Category Q talks about copies of prior testimony given by you either in deposition or at trial or before any of these congressional or governmental bodies, et cetera. You haven't brought any with you. Does that mean you don't have copies of any testimony you've given in the past on the subject of punitive damages?
A. Correct, I do not.
Q. Do you retain copies of any testimony that you've ever given before?
A. I usually don't get any in trial unless it's transcribed.
Q. Okay. What about depositions?
A. If the attorney sends me a copy of the deposition and relevant for a particular case, I keep it with the case, and then when the case is over, it goes with the file.
Q. What present understanding do you have as to how many defendants are involved in this lawsuit on any issues?
A. I do not have any understanding specifically. At one point there was a list of defendants in one of

the documents or at least the service list that showed several companies, but I have no specific understanding as to how many defendants are left or what their status is.
Q. So how did you develop an understanding as to which company or companies you should address any attention to?

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A. I was asked specifically by Bob Brown to testify to the net worth of the tobacco companies, Philip Morris and RJR.
Q. And did he name for you specifically the Philip Morris Company or business to which he wanted you to direct your attention?
A. I don't remember.
MS. CHABER: Vague and ambiguous.
THE WITNESS: I don't remember.
MR. BARRON: Q. But you in response to his request said you'd do that, correct?
A. Yes.
Q. And then you went about and did it?
A. Well, I -- at that time, I got started, yes.
Q. And as to one of the two defendants as you understand them to be, you actually have purchased shares of that defendant, correct?
A. Yes, I have a stock portfolio and I buy stocks

and sell stock all the time.
Q. Don't take umbrage with the question. I just want to figure out what happened and when it happened, so we know it happened.
My next question is, did you buy those shares of the company that you've looked at, meaning, "Philip Morris Companies, Inc.", before or after the telephone call from Mr. Brown?
A. Oh, way after. I've just recently bought it.
Q. And when you say "just recently," how recently?
A. About a week ago.
Q. Had you purchased shares of stock in any company that engaged either wholly or in part in tobacco products before this time?
MS. CHABER: I would object to the relevance. This is supposed to be a discovery depo.
THE WITNESS: Over the years, I was probably in and out of some, yes.
MR. BARRON: Q. In and out of any of the Philip Morris organizations?
A. Not that I can recall.
Q. The most up-to-date net worth figure, also known as net book value figure, for the Philip Morris organization that you looked at was a figure for Philip Morris Companies Inc., correct?

A. Correct.
Q. And for what time period was that?
A. It's as of 12/31/99.
Q. And that precise figure, again, was what?
A. Well, they call it -- they call it -- they don't refer to it as the book value of equity. They call it total stockholders' equity and it was 15,305,000,000.
Q. They call it total stockholders what?
A. Equity.
Q. And is that a number that you've found by looking at either page 36 or 37 in the 10K but you're not able to pinpoint precisely because of the way it was downloaded?
A. I believe it's page 36, but I'm not absolutely sure. It's not clear whether the pages are at the top

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or at the bottom. I cannot tell. So that's why I said -- it's right here and you can see that there is a page 37 here, but there is a page 36 right below it and a page 35 right above it, so I cannot tell you. But the balance sheet starts somewhere between either page 35 or 36.

MR. BARRON: Okay. What I'd like to do is go off the record for a moment and just talk about what we lawyers sometimes refer to as housekeeping matters and save space on the record, and then we'll come back on the record to conclude the deposition.

THE WITNESS: Certainly.

MS. CHABER: That's fine.

(Discussion off the record from 12:31 to 12:34.)

MR. BARRON: We're back on the record.

Q. What we've agreed is, first of all, Doctor, you're going to just read into the record specifically what you have in this folder and we're not going to make a copy of that.

A. In that particular folder it's entitled "Philip Morris Companies Inc. Forms 10Ks," and I have the, what they call, 10K report from 1994, '95, '96, '97 and '98 --

Q. Then you have --

A. -- in the same folder because I call it the 10K. I also have the downloaded 10K which is a slightly different 10K for 1998 and 1999. And that's why I put them together in this one folder.

MR. BARRON: And as to that, we're going to have an agreement, just like we're going to have an agreement for the RJR 10Ks, that if for any reason we, as the lawyers for the defendants, want to have access to those again, since we don't have a copy right here with us now, we will make that request and Ms. Chaber will see to it that we have an opportunity to look at those again.

MS. CHABER: I will do my best depending on what our court schedule is and what the judge gives me the opportunity to do.

THE WITNESS: But I will promise to bring these back to trial if I get the opportunity to testify.

MR. BARRON: Q. You need to bring everything you brought today.

A. Oh, yes, I definitely will bring them.

Q. The next thing you had what you labeled "Philip Morris Stock Reports," we're going to have that marked as defendant's next in order. And what we've agreed to do with this, as with the next several things we're going to mark this way, is that we're going to allow the court reporter to take the folder, she's going to make copies, she's going to have the originals available this afternoon to return to you through Miss Chaber's office since we're going to be over there.

(Defendant's Exhibit 3 was marked for identification.)

MR. BARRON: We're going to mark as Exhibit 4 what you have in a folder titled "R.J. Reynolds Tobacco Stock Report" with the same understanding as to how it

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will be treated.

Finally, as Exhibit 5, we'll have marked your folder that's called "Various," and we'll treat that the same as we treated the other two folders.

And with that, I have no further questions at this time, Doctor. Thank you very much.

(Defendant's Exhibits 4 and 5 were marked for identification.)

(Whereupon, the deposition was adjourned at 12:38 p.m.)

(Per a discussion during Robert Johnson's deposition, the reporter's copy of Exhibits 3, 4 and 5 were given to Mr. Barron to retain.)

--- oOo ---

I declare under penalty of perjury that the foregoing is true and correct. Subscribed at _____, California, this _____ day of _____, 2000.

_____

BARRY BEN-ZION

CERTIFICATE OF REPORTER

I, SUZANNE MILLER, a Certified Shorthand Reporter, hereby certify that the witness in the foregoing deposition was by me duly sworn to tell the truth, the whole truth and nothing but the truth in the within-entitled cause;

That said deposition was taken down in shorthand by me, a disinterested person, at the time and place therein stated, and that the testimony of the said witness was thereafter reduced to typewriting, by computer, under my direction and supervision;

I further certify that I am not of counsel or attorney for either or any of the parties to the said deposition, nor in any way interested in the event of this cause, and that I am not related to any of the parties thereto.

DATED: March 15, 2000,

_____

SUZANNE MILLER, CSR 6354

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